Superior Protection Inc. *and* United Government Security Officers of America–Local 229. Case 16–CA–23210

February 25, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 5, 2003, the General Counsel issued the complaint on November 19, 2003, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 16–RC–10361. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer, and a first amended answer, admitting in part and denying in part the allegations in the complaint.

On January 5, 2004, the General Counsel filed a Motion for Summary Judgment. On January 12, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 2, the Respondent filed a response, and on February 10, the General Counsel filed a reply thereto.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information, but contests the validity of the certification based on its contentions in the representation proceeding that: 1) the petitioned-for unit covering all of its security officers assigned to work at General Services Administration (GSA) contract facilities in three Texas counties is inappropriate, and the unit should be limited to security officers assigned to GSA contract facilities in Harris County (Houston and Pasadena); and 2) employee Kelvin Trotter is not an eligible voter because he was discharged prior to the election. In addition, the Respondent contends that the Regional Director improperly directed a mail ballot election, and that the Region failed to send mail ballots to eligible voters and to count mail ballots cast by eligible voters. Finally, the Respondent asserts that, in May 2002, after the representation case was litigated, it entered into a separate contract with GSA to provide guard services at eight additional facilities located within the geographic scope of the certified unit, and that the employees at these facilities would effectively be accreted to the unit pursuant to the Board's bargaining order in this case. The Respondent asserts that this raises a question regarding the appropriateness of the unit because the employees at these additional facilities, who were employed by the previous contractor, outnumber the unit employees at the facilities existing at the time of the election, 42 to 29, and it is well-established Board policy that a larger unit may not be accreted into a smaller unit without an election.

We find that the Respondent has not raised any representation issue warranting a hearing in this proceeding. The Respondent's contentions that the three-county unit is inappropriate and that Trotter is not an eligible voter were fully litigated and addressed by the Board in the preelection proceeding and the consolidated unfair labor practice/challenged ballot proceeding, respectively.[1] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require us to reexamine the Board's findings on those issues.

With respect to Respondent's contention that the Regional Director improperly directed a mail-ballot election, the Respondent never requested the Board in the representation proceeding to review the Regional Director's decision to conduct the election by mail. Although the Respondent mentioned in its request for review of the Regional Director's Decision and Direction of Election that it opposed the decision to hold a mail ballot election, it did so only in support of its contention that the petitioned-for three-county unit is inappropriate; that is, the Respondent claimed that the Regional Director's analysis on the mail ballot issue supported the Respondent's position on the scope-of-unit issue. The Respondent did not request the Board to overturn the Regional Director's direction of a mail ballot election. The Respondent, therefore, is precluded under Section 102.67(f) of the Board's Rules from raising the issue in this proceeding.

[1] By unpublished Order dated October 16, 2001, the Board (Chairman Hurtgen and Members Liebman and Walsh), denied the Respondent's request for review of the Regional Director's Decision and Direction of Election, which found that the petitioned-for unit is appropriate. Thereafter, in a published decision dated July 31, 2003 (339 NLRB No. 118), the Board (Members Schaumber, Walsh, and Acosta) adopted the administrative law judge's decision in the consolidated unfair labor practice/challenged ballot proceeding finding, inter alia, that the Respondent's discharge of Trotter was unlawful and that his ballot should therefore be opened and counted.

See *Ritz-Carlton Hotel Co.*, 321 NLRB 659 fn. 1 (1996), enfd. 123 F.3d 760 (3d Cir. 1997).

For similar reasons, the Respondent is also precluded from raising an issue in this proceeding about the manner in which the Region conducted the mail ballot election. Although the Respondent raised this issue in the consolidated unfair labor practice/challenged ballot proceeding, it failed to do so in timely filed objections as required by Section 102.69 of the Board's Rules. The administrative law judge, therefore, refused to allow the Respondent to litigate the issue, since it was not relevant to Trotter's eligibility, the only issue that the Respondent did timely raise. See 339 NLRB No. 118, slip op. at 3 fn. 2 (2003). The Board affirmed the judge's ruling and the Respondent does not offer to produce any newly discovered and previously unavailable evidence or allege that there are special circumstances that would require us to reconsider that ruling in this proceeding. See *Sundor Brands, Inc.*, 325 NLRB 499 (1998); *Bishop Mugavero Center for Geriatric Care*, 323 NLRB 642 (1997) (employer's failure to file timely objections to the conduct of the election precludes it from raising the issue in the subsequent refusal-to-bargain proceeding absent newly discovered and previously unavailable evidence).

Finally, we also find that no issue warranting a hearing is raised by the Respondent's contention that the certified unit is no longer appropriate because the employees at the eight additional GSA facilities it now services within the geographic scope of the unit would necessarily be accreted to the smaller group of employees who work at the GSA facilities it serviced at the time of the election. As an initial matter, there is no indication that the Union is seeking to accrete the employees at the additional facilities into the unit. On the contrary, as the Employer acknowledges, the Union filed a petition on January 13, 2003 (Case 16–RC–10480), seeking to represent the employees at those facilities in a separate unit.[2]

Further, contrary to the Respondent's contention, the employees at the additional facilities would not necessarily be accreted into the unit pursuant to the Board's bargaining order. Although the unit description on its face includes all security officers assigned to GSA contract facilities located in the three-county area, "the Board does not automatically accrete employees at a new [facility] solely because the unit description includes all the employer's [facilities], present and future, in a geographic area." *Coca-Cola Bottling Co. of Wisconsin*, 310 NLRB 844 (1993). As the Respondent itself argues, accretion would be inappropriate if the employees at the additional facilities numerically overshadow the employees at the facilities that existed at the time of the election. See, e.g., *Gould, Inc.*, 263 NLRB 442, 445 (1982). Accretion would also be improper if, as the Union appears to assert in its January 13, 2003 petition in Case 16–RC–10480, the employees at the additional facilities would constitute a separate appropriate unit. See, e.g., *Ready Mix USA, Inc.*, 340 NLRB No. 107, slip op. at 8–9 (2003); *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); and *Houston Division*, 219 NLRB 388 (1975). The Respondent does not address this unit question.[3]

Finally, the Respondent does not contend that the two groups of employees have been merged or consolidated, thereby completely obscuring their separate identity. Cf. *Renaissance Center Partnership*, 239 NLRB 1247 (1979) (Board processed employer's RM petition, even though it was filed during the certification year, where the certified group of security personnel at the Renaissance Center had been consolidated and intermixed with a larger, unrepresented group of security personnel at a hotel within the same commercial development, the Union had filed a unit-clarification petition seeking to accrete the larger group into the unit, and the evidence showed that the groups were now indistinguishable and that the only appropriate unit consisted of the overall security force).

Accordingly, we find that the Respondent has not raised any representation issue or special circumstances that are properly litigable in this unfair labor practice proceeding or that warrant reconsideration of the certification. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); *Action Automotive, Inc.*, 284 NLRB 251, 255–256 (1987), enfd. 853 F.2d 433 (6th Cir. 1988), cert. denied 488 U.S. 1041 (1989).[4]

We also find that there are no genuine issues of material fact warranting a hearing regarding the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the following information from the Respondent by letter dated September 30, 2003:

[2] The Region held the Union's petition in abeyance pending the Board's resolution of the underlying representation case here.

[3] These are issues that may properly be addressed in Case 16–RC–10480 or some other proceeding specifically involving the representational rights of the additional employees, rather than in this test-of-certification proceeding.

[4] As indicated above, Member Schaumber did not participate in the Board's October 16, 2001 Order, and Member Liebman did not participate in the Board's July 31, 2003 Decision and Order. However, Members Liebman and Schaumber agree that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision and orders in the representation proceeding.

1. A list of all posts and assignments in the unit and their Federal jurisdiction (i.e. partial, proprietary, concurrent, or exclusive), and the number of productive hours performed at each assignment.

2. The current list of names, addresses, and phone numbers for all employees in Houston.

As indicated above, the Respondent also admits that it refused to provide the foregoing information. Although the Respondent denies that the requested information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, the Respondent does so based solely on its contention that the Union was not properly certified.

Moreover, it is well established that information concerning unit employees' names, addresses, phone numbers, work assignments, and hours is presumptively relevant for purposes of collective bargaining and must be furnished on request.[5] Here, although the Union's request for the names, addresses, and phone numbers of all employees in Houston is not expressly limited to unit employees in Houston, the context suggests that the Union is only seeking information concerning unit employees. In any event, to the extent the Union's information request could be construed as requesting nonunit information, this would not excuse the Respondent's blanket refusal to comply with the request. It is well established that an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to the extent it encompasses necessary and relevant information.[6]

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain with the Union and to furnish the Union with the information it requested relating to unit employees.[7]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business in Houston, Texas, has been engaged in the business of providing security services for federal agencies.

During the 12-month period preceding issuance of the complaint, the Respondent provided services valued in excess of $50,000 directly to customers located outside the State of Texas.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the mail ballot election conducted October 15 through 29, 2001, the Union was certified on August 25, 2003,[8] as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: All permanent, full-time and regular part-time security officers assigned to work at GSA contract facilities in Harris, Montgomery and Galveston counties.
>
> EXCLUDED: All office clerical employees, employees on temporary assignment, professional employees, managers and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About September 30, 2003, the Union, by letter, requested the Respondent to bargain and to furnish necessary and relevant information, and, since about the same date, the Respondent has failed and refused to do so. We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing on and after September 30, 2003, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

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[5] See, e.g., *Stanford Hospital & Clinics*, 338 NLRB No. 158 (2003); *MEMC Electronic Materials, Inc.*, 338 NLRB No. 142 (2003); *American Logistics, Inc.*, 328 NLRB 443 (1999), enfd. 214 F.3d 935 (7th Cir. 2000).

[6] See, e.g., *Streicher Mobile Fueling, Inc.*, 340 NLRB No. 116, slip op. at 2 (2003); *Cheboygan Health Care Center*, 338 NLRB No. 115, slip op. at 2 fn. 2 (2003).

[7] The Respondent's request that the complaint be dismissed is therefore denied.

[8] The complaint incorrectly states that the certification issued on August 21, 2003.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information it requested relating to unit employees.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Superior Protection Inc., Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Government Security Officers of America–Local 229, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> INCLUDED: All permanent, full-time and regular part-time security officers assigned to work at GSA contract facilities in Harris, Montgomery and Galveston counties.
>
> EXCLUDED: All office clerical employees, employees on temporary assignment, professional employees, managers and supervisors as defined by the Act.

(b) Furnish the Union the information it requested on September 30, 2003, relating to unit employees.

(c) Within 14 days after service by the Region, post at its facility in Houston, Texas, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 30, 2003.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 25, 2004

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with United Government Security Officers of America–Local 229, as the exclusive bargaining representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All permanent, full-time and regular part-time security officers assigned to work at GSA contract facilities in Harris, Montgomery and Galveston counties.

EXCLUDED: All office clerical employees, employees on temporary assignment, professional employees, managers and supervisors as defined by the Act.

WE WILL furnish the Union the information it requested on September 30, 2003, relating to unit employees.

SUPERIOR PROTECTION INC.